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JEPPESEN DATAPLAN, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

## SAN JOSE DIVISION

BINYAM MOHAMED; ABOU ELKASSIM  
BRITEL; AND AHMED AGIZA,

CASE NO. C 07-2798 JW

## Plaintiffs,

VS

JEPPESEN DATAPLAN, INC.,

**DECLARATION OF DANIEL P.  
COLLINS IN SUPPORT OF  
DEFENDANT'S MOTION TO  
CHANGE TIME IN LIGHT OF THE  
UNITED STATES' RECENTLY FILED  
STATEMENT OF INTEREST**

**[Civil Local Rule 6-3]**

## DECLARATION OF DANIEL P. COLLINS

I, Daniel P. Collins, do hereby declare as follows:

3       1. I am a member of the law firm of Munger, Tolles & Olson LLP, counsel of record  
4 for Defendant Jeppesen DataPlan, Inc. in *Binyam Mohamed, et al. v. Jeppesen DataPlan, Inc.*,  
5 No. C-07-2798-JW, which is pending in this Court. I am a member in good standing of the bar of  
6 this Court. The matters set forth herein are based upon my own personal knowledge and, if called  
7 upon to do so, I could and would testify competently thereto.

8           2. Attached hereto as Exhibit A is a true and correct copy of the "Stipulation Under  
9 Local Rule 6-1(a) Extending the Time to Respond to the Complaint," which was filed in this  
10 action on June 26, 2007.

11           3. Attached hereto as Exhibit B is a true and correct copy of the "Stipulation and  
12 Order Re: Briefing on Motion to Dismiss," as entered by this Court in the docket on August 14,  
13 2007.

14       4. Attached hereto as Exhibit C is a true and correct copy of the "Statement of  
15 Interest of the United States" that was filed in this action on September 6, 2007.

16        5.        On August 30, 2007, I communicated by telephone with Michael Abate of the  
17        Civil Division at the U.S. Dept. of Justice, who had left me a voicemail message earlier that day.  
18        Mr. Abate informed me that the U.S. was considering whether to participate in the action, that it  
19        anticipated being able to file its papers one way or the other on October 19, 2007, and that he  
20        wanted to know whether the parties would be willing to enter into a stipulation that would  
21        postpone Defendants' response date until after that. In discussing the format that such a  
22        stipulation might take, Mr. Abate ultimately suggested that the parties could include a verbatim  
23        recital setting forth what they had been told about the position of the U.S. as follows: "The  
24        United States has informed the parties that it is presently considering whether and how to  
25        participate in this action, including whether to assert the state secrets privilege, and requests until  
26        October 19, 2007 to make its determination. If the United States determines to participate in this  
27        action, it anticipates filing its papers by October 19, 2007." I informed him that I would raise the  
28        matter with my client and with counsel for the Plaintiffs.

1       6. I subsequently spoke by telephone that same day with Steven Watt, one of the  
2 counsel for Plaintiffs. I informed him that Defendant was fine with the stipulation that the U.S.  
3 suggested, and I read him the verbatim language that Mr. Abate had given me. In describing  
4 what form the stipulation might take, I stated words to the effect that I envisioned a two-track  
5 extension in which the Defendant's date for answering would be deferred if the U.S. asserted the  
6 state secrets privilege by October 19, but if the U.S. did not, then the response date would be  
7 extended to a date certain. Mr. Watt stated that he would have to check with his co-counsel.

8        7. On the following day, August 31, Mr. Watt informed me that Plaintiffs might not  
9 be able to get back to me on the proposed stipulation until Tuesday, September 4. Later that same  
10 day, however, I received a call from Ben Wizner, another of the counsel for Plaintiffs, and he  
11 informed me that Plaintiffs would not agree to any such stipulation. Mr. Wizner subsequently  
12 confirmed the Plaintiffs' position in an email to me and Mr. Abate. Based on those  
13 communications, I understand the bases of Plaintiffs' objections to include the following: that, in  
14 Plaintiffs' view, the Government has not justified its stated need for more time; that it is  
15 Plaintiffs' view that the state secrets privilege is not relevant at the pleadings stage and that the  
16 Fourth Circuit's contrary conclusion in *El-Masri* (in which a cert. petition is pending) was wrong;  
17 and that Plaintiffs believe that a state secrets motion would be premature if the Defendant were to  
18 file a motion to dismiss rather than an answer.

19 I declare under penalty of perjury of the laws of the United States of America that the  
20 foregoing is true and correct.

/s/ Daniel P. Collins  
Daniel P. Collins